IN THE

Supreme Court of the United States

October Term, 1960

No.

HERBERT E. NELSON and WALLACE R. NELSON,

Petitioners

v.

SIERRA CONSTRUCTION CORPORATION,
a Nevada corporation,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

MORTON GALANE,
Counsel for Petitioners
Stearns Building,
Las Vegas, Nevada

INDEX

	PAGE
Citations to Opinions Below	1
Jurisdiction	2
Question Presented	5
Statutes and Constitutional Provisions Involved	6
Statement	6
Reasons for Granting the Writ	7
Conclusion	12
APPENDICES:	
APPENDIX A—Statutes and Constitutional Provision Involved	1
APPENDIX B-1—Oral Decision of Eighth Judicial District	3
APPENDIX B-2—Opinion of Supreme Court of the State of Nevada	5
APPENDIX B-3—Order of Supreme Court of State of Nevada Denying the Hearing	12
APPENDIX C—Certificate of Secretary of State of the State of Nevada	13

TABLE OF AUTHORITIES CITED

Cases

Brinkerhoff-Faris Trust Sav. Co. v. Hill, 281 U. S. 673, 678	5
Great Northern R. Co. v. Sunburst Oil & Ref. Co., 287 U. S. 358, 366	3, 5
Hanson v. Denckla, 357 U. S. 235, 249-250	8
Herndon v. State of Georgia, 295 U. S. 441	5
Kernan v. American Dredging Co., 355 U. S. 426, 444	11

PAGE

Missouri ex rel. Missouri Ins. Co. v. Gehner, 281 U. S. 313, 320 5

Ohio ex rel. Bryant v. Akron Metropolitan Park Dist., 281 U. S. 74, 79 5

Saunders v. Shaw, 244 U. S. 317, 320 5

Shore Line Oil Co. v. King, 68 Nev. 183, 228 P. 2d 395 2

Standard Oil Company v. New Jersey, 341 U. S. 428 8

Tidal Oil Company v. Flanagan, 263 U. S. 444, 454, 455 ..... 4, 5

Statutes

Laws 1945, Chapter 188 ..... 2, 12

NRS 79.050 6

NRS 79.140 6

NRS 79.170 ..... 4, 5, 6, 7

NRS 79.230 6

NRS 79.240 6

Uniform Stock Transfer Act, Section 1 ..... 9, 10

Uniform Stock Transfer Act, Section 10 10

Uniform Stock Transfer Act, Section 13 ..... 4, 5, 7, 8, 9, 10, 11

United States Constitution, Fourteenth Amendment 5

Miscellaneous

"Attachment of Corporate Stock", 73 Harv. L. Rev. 1579, 1589-1591 ..... 8, 11

Certificate of the Secretary of State of Nevada 13

Stocking & Watkins, "Monopoly and Free Enterprise" (The Twentieth Century Fund, 1951), pages 442-443 12

IN THE

Supreme Court of the United States

October Term, 1960

No.

HERBERT E. NELSON and WALLACE R. NELSON,
Petitioners,

v.

SIERRA CONSTRUCTION CORPORATION,
a Nevada corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

To the Honorable Earl Warren, Chief Justice, and the Honorable Associate Justices of the Supreme Court of the United States:

Herbert E. Nelson and Wallace R. Nelson, petitioners herein, pray that a writ of certiorari issue to review the judgment of the State of Nevada, entered May 16, 1960, Petition for Rehearing, denied June 3, 1960.

Citations to Opinions Below

The opinion of the Eighth Judicial District Court, Clark County, State of Nevada, is printed in Appendix B hereto, *infra*, p. 3. The opinion of the Supreme Court of the State of Nevada is printed in Appendix B hereto, *infra*, p. 5, and is reported in 352 P. 2d 115. The order of the Supreme Court of the State of Nevada denying rehearing without opinion is printed in Appendix B hereto, *infra*, p. 12.

Jurisdiction

The Federal constitutional question was first raised in the petition for rehearing, because it was the judgment itself rendered by the Supreme Court of the State of Nevada, as indicated by the opinion, which reached outside the territorial jurisdiction of the state to divest the petitioners of their title to shares of corporate stock which petitioners contend was not subject to the court's control.

The trial court, in its opinion refusing to grant a motion by petitioners to quash the levy of a writ of attachment and to dissolve the attachment, had previously made a determination divesting petitioners of their title to the stock: "I think now the stock belongs to the Nevada Savings and Loan Association." However, the trial court, as is obvious from the face of its opinion, presupposed the existence of jurisdictional facts upon which to validly predicate its determination.

The appeal to the Supreme Court of the State of Nevada was, therefore, directed to a reversal of those facts upon which the trial court had based its conclusion that "now the stock belongs to the Nevada Savings and Loan Association". There was no reason to raise a Federal constitutional question. Almost ten years before the Supreme Court of the State of Nevada had recognized, commencing with the Laws 1945, Chapter 188, that certain shares of corporate stock thereafter issued would come within the purview of the Uniform Stock Transfer Act, as enacted in the State of Nevada. *Shore Line Oil Co. v. King* (1951), 68 Nev. 183, 228 P. 2d 395. The question presented by the appeal was confined to state law, involving the adequacy of the evidence to support the factual findings implicit in the trial court's conclusion regarding the transfer of title to the stock from the petitioners to the Nevada Savings and Loan Association. If the petitioners had failed to reverse the implicit findings concerning the character of the shares of stock, then under the state law the trial

court's conclusion would be affirmed. In contrast, if the petitioners had succeeded in demonstrating the applicability of the Uniform Stock Transfer Act to the facts of the case, the state law of Nevada would have impelled reversal.

The Supreme Court of the State of Nevada, however, made an unexpected departure from the issues presented by the appeal. Having been presented with a verified motion, entitled "Special appearance by defendant for a motion to dissolve, vacate and discharge the attachment and garnishment purportedly levied by service on Nevada Savings and Loan Association on October 19, 1959", which stated that petitioners resided in the State of California and the Sheriff had failed to seize any of the stock certificates and the certificates had not been surrendered to Nevada Savings and Loan Association and their transfer by the holder had not been enjoined, it was obvious from the record that the stock certificates in question were physically outside of the territorial jurisdiction of the State of Nevada. The Supreme Court then created its own record of jurisdictional facts out of "what is in essence the stipulation of counsel followed by the acquiescence of the court". *Great Northern R. Co.* v. *Sunburst Oil & Ref. Co.*, 287 U. S. 358, 366.

Specifically, the comment was as follows:

> "On the oral argument herein, counsel for respondent conceded that the purported levy on the stock was ineffectual because the stock certificates were not seized by the officer making the levy or surrendered to Nevada Savings and Loan Association which issued it, or the holder had not been enjoined, *as required by NRS 79.170* * * *." (Emphasis supplied.)

Thus, the Supreme Court of the State of Nevada added a new setting in which to exercise its appellate jurisdiction, to wit:

(1) The shares of corporate stock in question were embodied in certificates governed by Section 13 of the Uniform Stock Transfer Act, identified in Nevada as NRS 79.170.

(2) The certificates were physically outside the territorial jurisdiction of the State of Nevada.

(3) The stock certificates were not seized pursuant to writ or process issued by any court of the State of Nevada.

(4) The stock certificates were not surrendered to Nevada Savings and Loan Association, which issued it.

(5) The holders had not been enjoined from transferring the certificates by any court of the State of Nevada.

Such a context in which to review a determination effecting a transfer of title to the shares certainly provoked a serious question whether there existed a jurisdictional predicate for the determination.

The opinion of the Supreme Court of the State of Nevada apparently perceived no obstacle, for it concluded that the evidence was sufficient to support the lower court's conclusion that Nevada Savings and Loan Association was the owner of the stock.

It was the opinion of the Supreme Court of the State of Nevada which set out the jurisdictional facts provoking the question whether divestiture of the petitioners' title to the stock was in excess of the court's jurisdiction over the subject matter. The opinion of the trial court invited no such challenge, with its obvious dependency on what the trial court deemed to be the applicable state law. Therefore, the Federal constitutional right alleged to have been violated found its genesis in the judgment of the state supreme court. "The question * * * could not well be raised until the handing down of the opinion indicating that the objectionable judgment was to follow." *Tidal Oil Company v. Flanagan*, 263 U. S. 444, 454, 455.

Certiorari jurisdiction of the Supreme Court of the United States is invoked, not in disregard of the general rule that the Federal question must have been raised in the state court before decision or must have actually been entertained and considered upon the petition for rehearing, but in reliance upon a well recognized exception to the general rule, namely: an alleged violation of the Federal constitutional right by the judgment of the state supreme court itself. *Brinkerhoff-Faris Trust Sav. Co.* v. *Hill*, 281 U. S. 673, 678; *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U. S. 313, 320; *Ohio ex rel. Bryant* v. *Akron Metropolitan Park Dist.*, 281 U. S. 74, 79; *Saunders* v. *Shaw*, 244 U. S. 317, 320; *Tidal Oil Company* v. *Flanagan*, *supra*; *Great Northern R. Co.* v. *Sunburst Oil & Ref. Co.*, *supra*; see *Herndon* v. *State of Georgia*, 295 U. S. 441.

The Supreme Court of the State of Nevada is the highest court of law or equity in the State of Nevada from which a final decision could be had in these matters herewith presented.

Question Presented

Whether the Nevada courts were without the jurisdiction required by the due process clause of the Fourteenth Amendment of the United States Constitution to enter a judgment transferring title to shares of stock subject to Section 13 of the Uniform Stock Transfer Act (NRS 79.170), since the stock certificates were physically outside of the territorial jurisdiction of Nevada, had not been seized pursuant to writ or process issued by any court of Nevada, were not surrendered to the Nevada corporation which had issued them and the holders had not been enjoined from transferring the certificates by any court of Nevada.

Statutes and Constitutional Provisions Involved

The statutes of the State of Nevada involved herein are NRS 79.050, NRS 79.140, NRS 79.170, NRS 79.230 and NRS 79.240.

The constitutional provision involved is Article XIV of the Amendments to the Constitution of the United States.

Said statutes and constitutional provision are set out in Appendix A hereto, *infra*, pp. 1 to 2.

Statement

Respondent herein commenced two separate actions against petitioners in the District Court of the State of Nevada, in and for the County of Clark. In both actions respondent served a writ of attachment upon a third party, Nevada Savings and Loan Association.

Nevada Savings and Loan Association had originally issued shares of stock to the petitioners; and prior to the commencement of the litigation petitioners had offered to sell their stock to Nevada Savings and Loan Association. During the course of the litigation the stock certificates were physically in the State of California outside of the territorial jurisdiction of the State of Nevada. Nevertheless, Nevada Savings and Loan Association accepted the offer to sell, but refused to pay the purchase price to the petitioners as a result of the service of a writ of attachment upon the corporation. Petitioners presented motions in both actions directed toward the dissolution of the levy of attachment.

The trial court deemed the purchase money attachable upon the theory that title to the stock was vested in Nevada Savings and Loan Association by transfer of the stock on their books. Petitioners took appeals in both actions from the orders refusing to dissolve the attachment.

The Supreme Court of the State of Nevada affirmed the trial court's conclusion that title to the stock had been transferred from petitioners to Nevada Savings and Loan Association.

However, the Supreme Court of the State of Nevada also acquiesced in a concession by counsel for respondent during oral argument, which resulted in the following jurisdictional facts furnishing a predicate for the question whether jurisdiction existed for the determination affecting title to the stock:

(1) The shares of corporate stock in question were embodied in certificates governed by Section 13 of the Uniform Stock Transfer Act, identified in Nevada as NRS 79.170.

(2) The stock certificates were not seized pursuant to writ or process issued by any court of the State of Nevada.

(3) The stock certificates were not surrendered to Nevada Savings and Loan Association, which issued it.

(4) The holders had not been enjoined from transferring the certificates by any court of the State of Nevada.

(5) The stock certificates were physically outside of the territorial jurisdiction of the State of Nevada.

Petitioners claimed that the opinion handed down by the Supreme Court of the State of Nevada indicated that a judgment would follow divesting petitioners of legal title to their stock in violation of a Federal constitutional right and that the Federal question could not well be raised until the opinion was rendered. Petition for rehearing was filed raising the Federal question. It was denied without opinion.

Reasons for Granting the Writ

The Supreme Court of the State of Nevada has by its judgment raised a Federal question in a way probably not in accord with applicable decisions of this Honorable Court.

This Honorable Court has recently expressed its concern with the situs of intangibles for the purpose of determining the existence of state jurisdiction over the subject matter. In *Hanson* v. *Denckla*, 357 U. S. 235, 249-250, it was stated:

> "Nearly a century has passed without this Court being called to apply that principle to an in rem judgment dealing with property outside the forum State. The invalidity of such a judgment within the forum State seems to have been assumed and with good reasons. Since a State is forbidden to enter a judgment attempting to bind a person over whom it has no jurisdiction, it has even less right to enter a judgment purporting to extinguish the interest of such a person in property over which the court has no jurisdiction."

Prior thereto, this Honorable Court has had occasion to determine the situs of abandoned stock dividends for the purpose of escheat jurisdiction. See *Standard Oil Company* v. *New Jersey*, 341 U. S. 428.

Neither case ruled on the precise question presented in this petition, but they do evidence the importance of determining the existence or absence of those "affiliating circumstances" without which the courts of a state may not enter a judgment affecting interests in property (jurisdiction in rem or quasi in rem). See *Hanson* v. *Denckla*, *supra*; 357 U. S. at 246.

However, in the June 1960 issue of Harvard Law Review, an article entitled "Attachment of Corporate Stock", 73 Harv. L. Rev. 1579, 1589-1591, has discussed Section 13 of the Uniform Stock Transfer Act as a predicate for *quasi in rem* jurisdiction in the following manner:

> "Corporate shares may provide the basis for quasi in rem jurisdiction in cases involving determination of title to shares, claims unrelated to shareholding, and voting rights. Unfortunately, not a single state that has adopted section 13 of the USTA

appears to have explicitly differentiated among these categories for purposes of jurisdiction. It has been contended that this failure to differentiate is deliberate, and that the Uniform Act's language manifests a specific intent to deprive courts of jurisdiction when the certificate is not subject to their control in all cases where title to the share may be affected. The 'attachment' clause of section 13 does appear to preclude jurisdiction in those cases which necessitate actual attachment of the share because they are unrelated to any property in the jurisdiction. A legislative intent also to prohibit suits designed to resolve conflicting title claims to a share, has been sought in the last sentence of section 13, which states that, except where a certificate is lost or destroyed, the corporation cannot be compelled to issue a new one until the old is surrendered to it, and in section 1's statement that title to a certificate and to the shares represented thereby can be transferred only by delivery of the certificate.

On close examination, neither section seems to require this extensive rejection of jurisdiction. The court's inability under section 13 to compel corporate issuance of a new certificate does not render the assumption of jurisdiction futile, since limited relief can still be provided for the plaintiff by transferring to him all the incidents of share ownership, including the right to receive dividends, subject to divestment by a bona fide purchaser of the certificate. Moreover, a default judgment, if used by a forum in the defendant's state as the basis for issuance of a surrender order, would eventuate in receipt of a new certificate. If this limited assistance amounts to transfer of title to the share by the court at the corporate domicile, it might seem precluded by section 1. But the accompanying Commissioners' Note to that section states that it merely codifies the prior law. The prior law protected bona fide purchases of the certificate on the theory that an assignee of the share was estopped to assert his title against a bona fide transferee of the certificate, because he could have averted the transfer by requiring delivery of the certificate. Section 1, read in conjunction with sec-

tion 10, achieves the same result with a new theory: that separate assignment of the share merely conveys an equitable right which can be cut off by transfer of the certificate in which legal title is merged. Neither the old law nor sections 1 and 10 prevent the transfer of some interest in the share without concomitant transfer of the certificate. They simply subject the interest to the divestment at the hands of a bona fide purchaser of the latter.

A more persuasive argument for preclusion of jurisdiction in suits to establish title to shares may be grounded solely on the interrelation of the two provisions of section 13. If the limited assistance available to plaintiffs despite the last sentence of section 13 is thought of as effecting transfer of title to the share, it might seem prohibited by the 'attachment' clause of the section, since a transfer of title appears to connote seizure of the *res*. On the other hand, a distinction might be drawn between the court's shifting title after suit in order to satisfy the judgment and merely determining—in the type of case under consideration—the location of title as of the time of litigation. Although standing alone this distinction seems little more than a semantic quibble, it gains substantial support from the thrust of section 8, which appears to presuppose the jurisdiction of corporate-domicile forums over suits to try title to the share in providing that a bona fide transferee of a certificate will prevail despite a prior invalidation of his transferor's title. Assumption of jurisdiction in this category of cases might possibly be justified on the theory that it seems directly analogous to actions seeking determination of title to land, which do not require seizure of the *res* because of its immovability. The share in some measure partakes of that quality of immovability."

We quote from the article not for the purpose of persuading this Honorable Court to rule in favor of the petitioner upon the merits, but merely to stimulate the Court's interest in hearing a full presentation of argument.

The issue involves a statute which has been uniformly adopted practically on a nationwide basis. As stated by

Mr. Justice Frankfurter in *Kerian v. American Dredging Co.*, 355 U. S. 426, 444:

> "Such questions of construction are among the most important issues for final determination by this Court."

Section 13 of the Uniform Stock Transfer Act is embodied in the legislation of all the states except Alaska, California, Colorado, Delaware, Florida, Georgia, Kansas, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, Oklahoma and Vermont. See "Attachment of Corporate Stock", 73 Harv. L. Rev. 1579 (1960).

Section 19 of the Uniform Transfer Act (NRS 79.230) reads: "This act shall be interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

Clearly, we are propounding a Federal constitutional question which invites determination by the United States Supreme Court.

The petitioners represent a class of stockholders throughout the nation whose certificates are located outside of the territorial jurisdiction of the State of Nevada, but whose title to the shares may be determined by the courts of Nevada on the basis of corporate domicile in Nevada without control over the certificate having been acquired pursuant to Section 13 of the Uniform Stock Transfer Act.

The Supreme Court of the State of Nevada has by its judgment informed certificate-holders of Nevada corporations, no matter where they may hold physical possession of the certificates, that legal title to the shares of stock may be divested without physical control of the certificates pursuant to the requirements of Section 13 of the Uniform Stock Transfer Act.

Stockholders of Nevada corporations, who are holding certificates throughout the nation, deserve an answer whether this judgment of divestiture can remain final without infringement of the Federal Constitution. The State of Nevada is recognized as a domicile of many corporations whose stockholders are distributed in other states. See Stocking & Watkins, "Monopoly and Free Enterprise" (The Twentieth Century Fund, 1951), pages 442-443. The Certificate of the Secretary of State of the State of Nevada, set forth in Appendix C hereto, *infra*, p. 13, shows the substantial number of Nevada corporations which have been organized since the adoption of the Uniform Stock Transfer Act, Laws 1945, Chapter 188.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

MORTON GALANE,
Counsel for Petitioners.

APPENDIX A

Article XIV, of the Amendments to the Constitution of the United States, which reads as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

79.050 How title to certificates and shares may be transferred. Title to a certificate of and to the shares represented thereby can be transferred only:

1. By the delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby; or

2. By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specific person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or bylaws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corpo-

ration or shall be registered by a registrar or transferred by a transfer agent.

79.140 Ineffectual attempt to transfer amounts to a promise to transfer. An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the information and performance of contracts.

79.170 No attachment or levy upon shares unless certificate surrendered or transfer enjoined. No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

79.230 Interpretation shall give effect to purpose of uniformity. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

79.240 Application of chapter to certificates issued after July 1, 1945. The provisions of this chapter apply only to certificates issued after July 1, 1945.

APPENDIX B-1

(Oral Decision of Eighth Judicial District)

IN THE

EIGHTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

Nos. 96133 and 99495

SIERRA CONSTRUCTION CORPORATION, a Nevada Corporation,
Plaintiff,

vs.

HERBERT E. NELSON and WALLACE R. NELSON,
Defendants.

I think the argument is highly technical. I think the transaction by the letters is a closed transaction. I think now the stock belongs to the Nevada Savings and Loan Association. I think they would have a right to transfer that stock on their books whether they had actual possession of the stock certificate or not.

I think when the Nelsons made that offer to sell the stock to the Nevada Savings and Loan Association and Nevada Savings and Loan Association has by Resolution on their minutes accepted it that transaction became closed.

The only difference would be the payment of the money. So, they wrote a check but they could not pay the money because it was attached; so, inasmuch as it was a closed transaction I think the money was attachable.

Now, the next question is whether or not the writ of attachment contains a sufficient allegation as to owing the debt and I think it is a rule you have to comply with the law in every respect.

The law is highly technical. I think the Association holds the money now that belongs to the Nelsons.

I cannot see any sufficient grounds to discharge or dissolve the attachment.

Was the writ improperly issued? I don't think so.

Was the property levied upon exempt from execution? There was nothing shown as to an exemption.

Was the levy excessive? Nothing was shown.

So the motion to quash the levy or writ of attachment and the motion to dissolve and vacate and discharge the attachment and garnishment purportedly levied by service on Nevada Savings and Loan Association be denied.

APPENDIX B-2

(Opinion of Supreme Court of the State of Nevada)

IN THE

SUPREME COURT

OF THE STATE OF NEVADA

—o—

HERBERT E. NELSON and WALLACE R. NELSON,
Appellants,

v.

SIERRA CONSTRUCTION CORPORATION, a Nevada Corporation,
Respondent.

—o—

Nos. 4262 and 4263

[Filed May 16, 1960]

Appeals from the Eighth Judicial District Court, Clark County; A. S. Henderson, Judge, Department No. 2.

Affirmed on both appeals.

MORTON GALANE, of Las Vegas, for Appellants.

MORSE, GRAVES and COMPTON and JAMES H. PHILLIPS, of Las Vegas, for Respondent.

OPINION

By the Court, McNAMEE, C. J.:

Two cases of the same title have been consolidated for oral argument on appeal. The questions involved pertain to each case except as hereinafter noted.

Appeal is from an order refusing to dissolve an attachment.

In case number 4262 the court had personal jurisdiction over appellants by reason of their appearance in said action. They made the following three motions in the court below:

1. Motion to quash the levy of a writ of attachment, filed October 5, 1959;

2. Motion to dissolve, vacate, and discharge the attachment and garnishment purportedly levied by service on Nevada Savings and Loan Association on April 15, 1959, filed October 22, 1959;

3. Motion to dissolve, vacate, and discharge the attachment and garnishment purportedly levied by service on Nevada Savings and Loan Association on October 19, 1959, filed October 22, 1959.

The grounds for motion number 1 were (a) the sheriff failed to serve upon the Nevada Savings and Loan Association a notice that the debts owing by it to appellants or the credits or other personal property in possession or under its control belonging to the defendants were attached in pursuance of said writ as required by subsection 4 of NRS 31.060; (b) the sheriff failed to serve upon the Nevada Savings and Loan Association a notice stating the stock or interest of the defendants was attached in pursuance of the writ of attachment as required by subsection 3 of NRS 31.060; (c) the sheriff failed to actually seize stock certificates, and the certificates had not been surrendered to Nevada Savings and Loan Association and their transfer by the holder had not been enjoined as required by NRS 79.170; (d) the contract whereby Nevada Savings and Loan Association would pay cash for the stock of the defendants was not attachable.

The grounds for motion number 2 were (a) the amount payable to appellants by Nevada Savings and Loan Association under contract contemplates a cash transaction not

a debtor-creditor relationship and was not subject to attachment and garnishment; (b) the sheriff in serving the writ of attachment on Nevada Savings and Loan Association failed to accompany it with any notice that the debts owing by it to the appellants or the credits or other personal property in its possession or under its control belonging to the defendants were attached in pursuance of said writ of attachment; (c) the sheriff served a writ of attachment to Nevada Savings and Loan Association but failed to accompany it with any notice stating that the stock or interest of the defendants was attached in pursuance of said writ of attachment; (d) the sheriff failed to actually seize any of the stock certificates and the certificates had not been surrendered to the Nevada Savings and Loan Association and their transfer by the holder have not been enjoined; (e) Marilynn D. Nelson and Mary Virginia Nelson were not joined as parties defendant in the main action and the records of the Nevada Savings and Loan Association indicate that they have an interest as joint tenants in the stock purportedly levied upon.

The grounds for motion number 3 were (a) the amount payable by Nevada Savings and Loan Association under contract contemplates a cash transaction not a debtor-creditor relationship and is not subject to attachment and garnishment; (b) the sheriff failed to actually seize any of the stock certificates and the certificates had not been surrendered to Nevada Savings and Loan Association and their transfer by the holder had not been enjoined; (c) Marilynn D. Nelson and Mary Virginia Nelson were not joined as parties defendant in the main action and the records of the Nevada Savings and Loan Association indicate that they have an interest as joint tenants in the stock purportedly levied upon.

In case number 4263 appellants were not personally served in this action and entered no general appearance therein. By special appearance they filed a motion to dissolve, vacate, and discharge the attachment and garnish-

ment purportedly levied by service on Nevada Savings and Loan Association on October 19, 1959.

The grounds for the motion in this case were (a) the amount payable to appellants by Nevada Savings and Loan Association under contract contemplated a cash transaction not a debtor-creditor relationship and is not subject to attachment or garnishment; (b) the sheriff failed to actually seize any of the stock certificates and the certificates had not been surrendered to Nevada Savings and Loan Association and their transfer by the holder had not been enjoined; (c) Marilynn D. Nelson and Mary Virginia Nelson were not joined as parties defendant in the main action and the records of the Nevada Savings and Loan Association indicate that they have an interest as joint tenants in the stock purportedly levied upon.

The three motions in case number 4262 and the one motion in case number 4263 were consolidated for argument in the lower court and all four motions were denied on October 26, 1959 and a written order to this effect was filed in the cases. Appeal in each case is from "the order refusing to dissolve an attachment made and entered on the 26th day of October 1959."

The statutory grounds for discharge of attachment are found in NRS 31.200 which reads as follows:

"1. The defendant may also, at any time before trial, apply upon motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to the judge thereof, for a discharge of the attachment on the following grounds:

(a) That the writ was improperly issued.

(b) That the property levied upon is exempt from execution.

(c) That the levy is excessive.

"2. If the court or the judge thereof on the hearing of such motion shall find that any of the grounds stated

in subsection 1 exist, the attachment and levy thereof shall be discharged. If the motion is based upon paragraph (c) of subsection 1 only, and the same is found to exist, the discharge of attachment shall be only as to the excess."

It is apparent from the foregoing that none of the grounds stated in appellants' several motions for discharge of attachment was one of the statutory grounds specified in NRS 31.200. Each of the grounds upon which the motions were based pertains to the improper levy of the writ as distinguished from an improper issue thereof.

The record on appeal does not contain any of the proceedings which took place at the hearing on said motions other than the oral decision of the court wherein the learned judge thereof stated:

"I think the argument is highly technical. I think the transaction by the letters is a closed transaction. I think now the stock belongs to the Nevada Savings and Loan Association. I think they would have a right to transfer that stock on their books whether they had actual possession of the stock certificate or not.

"I think when the Nelsons made that offer to sell the stock to the Nevada Savings and Loan Association and Nevada Savings and Loan Association has by Resolution on their minutes accepted it that transaction became closed.

"The only difference would be the payment of the money. So, they wrote a check but they could not pay the money because it was attached; so, inasmuch as it was a closed transaction I think the money was attachable.

"Now, the next question is whether or not the writ of attachment contains a sufficient allegation as to owing the debt and I think it is a rule you have to comply with the law in every respect.

"The law is highly technical. I think the Association holds the money now that belongs to the Nelsons.

"I cannot see any sufficient grounds to discharge or dissolve the attachment.

"Was the writ improperly issued? I don't think so.

"Was the property levied upon exempt from execution? There was nothing shown as to an exemption.

"Was the levy excessive? Nothing was shown.

"So the motion to quash the levy or writ of attachment and the motion to dissolve and vacate and discharge the attachment and garnishment purportedly levied by service on Nevada Savings and Loan Association be denied."

What evidence was considered by the court, if any at all, in support of or in opposition to the grounds upon which appellants' motions were based does not appear from the record. We have only the court's bald statement in said decision, to wit, "I cannot see any sufficient grounds to discharge or dissolve the attachment."[1]

Whether it would have been proper for the court below on a motion for discharge of attachment to grant a discharge on grounds other than the three statutory grounds is a question unnecessary for us to decide on these appeals. The court refused to grant the motions and nothing appears in the records on appeal from which this court can determine that error was committed.

---

[1] The opening sentence of the quoted oral decision of the district judge indicates that the decision was rendered immediately following oral argument—and apparently immediately following the reply argument of the movant. What preceded the argument is left to conjecture. Under Rule 20 of the District Court Rules, regulating procedure on motions, the moving party reads his moving papers or introduces oral evidence. The party opposing reads his opposing papers or introduces his oral evidence. The moving party then proceeds in like manner in rebuttal. Counsel then make their respective arguments. Not only was the hearing of the motions apparently unreported, but the record is devoid of even the clerk's court minutes. Appellants' designation of contents of the record on appeal designates the pleadings, the motions, the orders of court, and "all minutes of court on each and every hearing of any matter or motion concerned herein." Respondent made no counter designation. No minutes appear nor any evidence by way of affidavits or otherwise.

On the oral argument herein, counsel for respondent conceded that the purported levy on the stock was ineffectual because the stock certificates were not seized by the officer making the levy or surrendered to Nevada Savings and Loan Association which issued it, or the holder had not been enjoined, as required by NRS 79.170, but this concession loses significance in view of the lower court's decision that Nevada Savings and Loan Association was the owner of the stock and that the purchase price therefor in the hands of said association at the time of the levy was attachable.

We do not know what evidence was considered by the lower court which resulted in this conclusion and in the absence thereof we must assume that the lower court's conclusion was supported by competent evidence. State ex rel. Lyon v. Lyon, 75 Nev....., 346 P. 2d 709.

The order appealed from is affirmed in each case.

Badt and Pike, JJ., concur.

APPENDIX B-3

(Order of Supreme Court of State of Nevada Denying the Hearing)

IN THE SUPREME COURT OF THE STATE OF NEVADA

—o—

HERBERT E. NELSON and WALLACE R. NELSON,
Appellants,

v.

SIERRA CONSTRUCTION CORPORATION, a Nevada Corporation,
Respondent.

—o—

Nos. 4262 and 4263

MORTON GALANE, of Las Vegas, for Appellants.

MORSE, GRAVES AND COMPTON and JAMES H. PHILLIPS of Las Vegas, for Respondent.

Per Curiam:

Rehearing denied.

Done at Carson City, Nevada, this 3rd day of June 1960.

McNAMEE, C. J.
BADT, J.
PIKE, J.

APPENDIX C

STATE OF NEVADA

DEPARTMENT OF STATE

I, JOHN KOONTZ, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that there are on file in this office approximately 10,000 corporations currently in good standing.

I FURTHER CERTIFY that the following is a list of corporations filed during the following years:

1945	395
1946	697
1947	668
1948	662
1949	519
1950	664
1951	589
1952	751
1953	973
1954	1225
1955	1655
1956	1140
1957	1165
1958	1204
1959	1674

now on file and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 1st day of June A. D. 1960.

JOHN KOONTZ,
Secretary of State.

[GREAT SEAL OF THE STATE OF NEVADA]